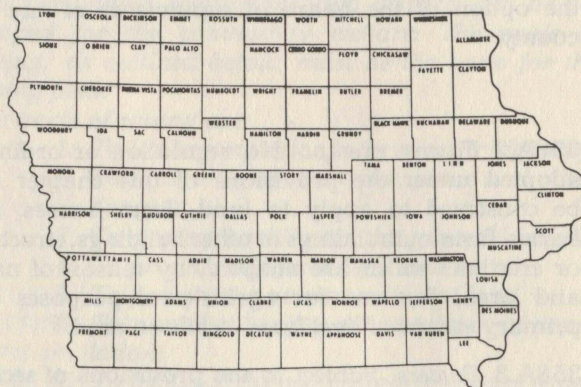


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# IOWA COUNTY ZONING LAW EXPLAINED



## CHAPTER 358 A IOWA CODE

Rural zoning is gaining wide acceptance in the United States. It was first used by rural governments to control rapidly growing urban development at the fringe of large urban centers. In recent years, however, rural zoning has been frequently used in totally rural areas where no large centers of population exist.

There are two principal reasons why rural areas are finding zoning useful. The first is the rapid growth of the nation's population, resulting in a growing demand for rural territory to support urban population. The second reason is the highly mobile character of today's people. Ease of transportation makes it possible for people to travel long distances to and from their place of employment. This results in a spread of urban development into the rural countryside. Large increases in population also result in an increasing demand for recreation and relaxation. People travel even greater distances seeking these goals.

Encroachment of urban uses and activities into the rural areas has created problems that have never before existed in these areas. Boards of supervisors are finding it necessary to employ zoning as a means of exercising some control over urban development. The higher intensity of land use requires more extensive public services and facilities. Schools are needed.

*Prepared by Burl A. Parks, extension community planning and development specialist.*

Health problems result. Better roads are needed to support heavier traffic demands. Firefighting equipment is needed, along with many other public facilities that were not previously needed for rural land use.

Zoning, our only means of controlling land use, has become a necessary tool of rural governments. Good zoning must be based on a comprehensive plan which affords the community an opportunity to evaluate present services and foresee future needs.

This pamphlet has been prepared as a resource for counties in Iowa that are contemplating the adoption of zoning. Each section of the Iowa County Zoning Enabling Act is explained in lay terms to provide county officials and citizens with a better understanding of the law.

The State Enabling Act provides a framework within which counties may adopt zoning. A great deal of freedom is permitted in drawing up regulations for local counties. Counties may devise their own ordinances in a form suitable to their own individual needs, but no local regulations may exceed the authority granted by the law.

This pamphlet is arranged so that the entire law, as enacted by the Iowa Legislature, is presented in the left-hand columns. A discussion in lay language of each section of the law appears in the right-hand columns, directly opposite the section being explained.



## Law

358A.1 *Where applicable.* The provisions of this chapter shall be applicable to any county of the state at the option of the board of supervisors of any such county.

358A.2 *Farms exempt.* No regulation or ordinance adopted under the provisions of this chapter shall be construed to apply to land, farm houses, farm barns, farm outbuildings or other buildings, structures, or erections which are adapted, by reason of nature and area, for use for agricultural purposes as a primary means of livelihood, while so used.

358A.3 *Powers.* Subject to the provisions of sections 358A.1 and 358A.2, the board of supervisors of any county is hereby empowered to regulate and restrict the height, number of structures, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence or other purposes, and to regulate, restrict and prohibit the use for residential purposes of tents, trailers and portable or potentially portable structures; provided that such powers shall be exercised only with reference to land and structures located within the county but lying outside of the corporate limits of any city or town. The board of supervisors of any county may prescribe and charge a reasonable building permit fee, and upon receipt of an application containing all required information, in due form and properly executed, showing that the proposed structure will comply with all applicable regulations of the political subdivision in which it is to be located and upon payment of the required permit fee, the board of supervisors shall, within seven (7) days, issue a permit to the applicant.

358A.4 *Areas and Districts.* For any and all of said purposes the board of supervisors may divide the county, or any area or areas within the county, into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this chapter; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures or land. All such regulations and restrictions shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

## Explanation

358A.1 *The law provides that any county in Iowa may adopt zoning, but does not require that it do so. This decision is left to the discretion of the individual counties. If a county decides to zone, then the zoning regulations which are adopted must fall within the powers granted by this enabling act.*

358A.2 *Farm lands and buildings are specifically exempted from the provisions of any zoning regulation which may be adopted in the county. Even if a farm is zoned for residential, commercial or industrial purposes, it may still be farmed. No zoning provisions shall apply to any farm that is being farmed.*

358A.3 *If a county decides to adopt zoning, the board of supervisors may exercise any or all of the powers listed below. These powers are applicable only in areas outside the limits of cities and towns. Unincorporated villages would be subject to county zoning regulations.*

*The board of supervisors may regulate or restrict:*

1. *The height, number and size of structures or buildings to be placed on a lot.*
2. *The percent of a lot that may be occupied by buildings.*
3. *The size of yards, courts and other open spaces (width of side yard, depth of front or rear yards).*
4. *The density of population. This is accomplished by regulating the minimum size of lots.*
5. *The location and use of buildings, structures and land for purposes of trade, industry, residences or other purposes.*
6. *Tents, trailers or portable structures for residential purposes.*

*If it deems advisable, the board of supervisors may charge a fee for issuance of a permit for any of the above purposes. This does not apply in any way to agricultural land or buildings.*

358A.4 *Zoning districts of any size, shape or number may be established within the county. Such districts fall into three general categories: residential, commercial and industrial. Within each district, the construction, reconstruction, repair and use of buildings and the use of land may be governed by written regulations. The written regulations must apply equally throughout each district, but the regulations for each type of district may differ from those in another type of district. This means that residential district regulations must apply equally to all residential districts in the county, but the regulations for residential districts may differ from commercial district regulations which apply equally to all commercial districts. The entire county or any part of the county may be divided into zoning districts.*



**358A.5 Objectives.** Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the street or highway; to secure safety from fire, panic, and other dangers; to protect health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

Such regulations shall be made with reasonable consideration, among other things, as to the character of the area of the district and the peculiar suitability of such area for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such county.

**358A.6 Public Hearings.** The board of supervisors shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days notice of the time and place of such hearing shall be published in a paper of general circulation in such county.

**358A.7 Changes and amendments.** Such regulations, restrictions, and boundaries may, from time to time, be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change signed by the owners of twenty percent or more either of the area included in such proposed change, or of the area immediately adjacent thereto and within five hundred feet of the boundaries thereof, such amendment shall not become effective except by the favorable vote of at least sixty percent of all of the members of the board of supervisors. The provisions of section 358A.6 relative to public hearings and official notice shall apply equally to all changes or amendments.

**358A.5 Zoning cannot be unreasonable or capricious and must be based on a study of the community so that reasonable regulations and districts can be developed for the community welfare. The goals of zoning, as outlined below, must be the basis for the zoning plan.**

*The goals of zoning are:*

1. *To lessen congestion in the street or highway.*
2. *To secure safety from fire, panic and other dangers.*
3. *To protect health and the general welfare.*
4. *To provide adequate light and air.*
5. *To prevent the overcrowding of land.*
6. *To avoid an undue concentration of population.*
7. *To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.*

*In preparing the regulations, due consideration must be given to:*

1. *The character of the area in the district and the suitability of the area for the uses proposed by zoning.*
2. *Conserving the value of buildings.*
3. *Encouraging the most appropriate use of land throughout the county.*

**358A.6 The board of supervisors determines where the boundaries of districts shall be located and the form and content of the regulations which apply to each district. The board shall also provide the method whereby changes and amendments to the regulations and district boundaries may be made.**

*The board must hold a public hearing before any part of the zoning regulations or zoning districts becomes effective. Any citizen, organization or firm may attend the hearing to express views concerning the zoning ordinance.*

*A notice must be published in a newspaper of general circulation in the county stating the time and place of the hearing. The hearing cannot be held until at least 15 days after publication of the notice.*

**358A.7 Changes in the location of district boundaries or in the written regulations may be made from time to time. The responsibility for making such changes is vested in the board of supervisors. If the owners of 20 percent of the land in the area to be rezoned oppose the change, or if the owners of 20 percent of the land within 500 feet of the boundary of the proposed change oppose the change, a favorable vote of at least 60 percent of all the members of the board of supervisors is required before the change can be made effective.**

*Any changes in the boundaries of districts or in the written text of the zoning ordinance must be preceded by a public hearing in the same manner as prescribed for adopting the zoning ordinance.*



## Law

358A.8 *Commission appointed.* In order to avail itself of the powers conferred by this chapter, the board of supervisors shall appoint a commission, to be known as the county zoning commission, to recommend the boundaries of the various original districts, and appropriate regulations and restrictions to be enforced therein. Such commission shall, with due diligence, prepare a preliminary report and hold public hearings thereon before submitting its final report; and the board of supervisors shall not hold its public hearings or take action until it has received the final report of such commission. After the adoption of such regulations, restrictions, and boundaries of districts, the zoning commission may, from time to time, recommend to the board of supervisors amendments, supplements, changes or modifications.

358A.9 *Administrative officer.* The board of supervisors shall appoint an administrative officer authorized to enforce the resolutions or ordinances so adopted by the board of supervisors. Such administrative officer may be a person holding other public office in the county, or in a city or other governmental subdivision within the county, and the board of supervisors is authorized to pay to such officer out of the general fund such compensation as it shall deem fit.

358A.10 *Board of adjustment.* The board of supervisors shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this chapter shall provide that the said board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinances or regulations in harmony with its general purpose and intent and in accordance with the general or specific rules therein contained, and provide that any property owner aggrieved by the action of the board of supervisors in the adoption of such regulations and restrictions may petition the said board of adjustment direct to modify regulations and restrictions as applied to such property owners.

## Explanation

358A.8 *Although the power to adopt county zoning is vested in the board of supervisors, the board can adopt only those zoning ordinances prepared by a zoning commission. The zoning commission is appointed by the board of supervisors and may have an unlimited membership. The zoning commission usually has 5 to 9 members, with 7 being a frequent number. Only residents of the county may serve on the zoning commission of that county.*

*The commission is charged with the responsibility of preparing the ordinance and recommending the boundaries and location of various districts. The commission must hold a public hearing on the proposed ordinance before submitting a final draft to the board of supervisors, which must also hold a public hearing before the ordinance may be approved.*

*It is suggested that the members of the commission be appointed for 5-year terms and that the appointments be staggered so that all the terms do not expire the same year. After the ordinance has been adopted, the commission should recommend to the board of supervisors any amendments, supplements or changes to the ordinance.*

358A.9 *The board of supervisors is required to appoint a zoning administrator to enforce the zoning ordinance. The appointee may be a person already employed by the county or any other governmental subdivision in the county, such as a city or township. In many cases the county engineer is appointed zoning administrator. The board is authorized to determine how much salary, if any, is to be established for this service. If a salary is authorized it shall be paid from the county general fund.*

*The zoning administrator usually is charged with the following responsibilities:*

1. *To issue permits for urban uses and collect any fees which may be established for said permits.*
2. *To carry out administrative duties for the zoning commission and board of supervisors.*
3. *To enforce the ordinance and stop all violations.*
4. *To explain the ordinance when citizens desire information on zoning.*

358A.10 *A board of adjustment is provided for because it is impossible to write an ordinance that will fit all cases when hundreds of parcels of land are involved. The purpose of the board of adjustment is to alleviate cases of hardship which are created by a literal enforcement of the law and to provide a method for citizens to be heard when they disagree with the interpretation and application of zoning as it affects their property.*



## Law

358A.11 *Membership of board.* The board of adjustment shall consist of five members each to be appointed for a term of five years, excepting that when the board shall first be created one member shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

358A.12 *Rules and regulations.* The board shall adopt rules in accordance with the provisions of any regulation or ordinance adopted pursuant to this chapter.

Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

358A.13 *Appeals to board.* Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken.

358A.14 *Stay of proceedings.* An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

## Explanation

358A.11 *The board of supervisors appoints members to the board of adjustment as provided in this section. The terms of the members are staggered so that only one term may expire in any given year. This provides a continuity to the board of adjustment.*

358A.12 *Because cases heard by the board of adjustment may be appealed to the civil courts, it is essential that complete records of all proceedings be kept. The rules of procedure must be adopted and followed, and all evidence must be carefully documented. The vote of each member in each case must be recorded. These records must be filed immediately in the office of the board of adjustment.*

358A.13 *The right of appeal is unlimited. However, the board frequently receives appeals over which it has no jurisdiction. When an appeal is made to the board, all records involving the case must be transferred to the board from the office of the zoning administrator. The appellant must state in his appeal on what grounds the appeal is made. The board shall establish the time limit within which an appeal must be filed.*

358A.14 *When an appeal is filed with the board, no further action may be taken in the proceedings until the board has rendered a decision. If, however, waiting for a decision from the board might be perilous to life or property, corrective action may be taken unless restrained by an order from the board or a court of record.*



## Law

358A.15 *Powers of board.* The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

3. To authorize upon appeal, in specific cases, such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

358A.16 *Decision.* In exercising the above mentioned powers such board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

358A.17 *Vote required.* The concurring vote of three members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to affect any variation in such ordinance.

358A.18 *Petition to court.* Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment under the provisions of this chapter, or any taxpayer, or any officer, department, board or bureau of the county, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board.

## Explanation

358A.15 *The board of adjustment has three basic powers as outlined in this section. These powers are as follows:*

1. *If a citizen feels there is an error in the action of the enforcing officer, he may request a decision from the board of adjustment. The board may decide against the applicant, in favor of the applicant or may modify the decision of the enforcing officer. The board's decision is final.*
2. *The zoning ordinance may state that certain exceptions to the ordinance may be granted by the board. An example of such an exception is the location of a building or premises for use by a public service corporation such as a water, gas or power company when the board believes it to be necessary for the public welfare.*
3. *If unusual conditions or circumstances cause a hardship when the provisions of zoning are applied, the board is permitted to vary the law so that a reasonable use of the property is allowed. Such conditions or circumstances might result from extreme topography or the shape of the property. For example, if zoning requires that a building be set back 50 feet from the street, but such a requirement would place the building in a ravine, the board may reduce the requirement so that a reasonable buildable site is available on the lot.*

358A.16 *The board of adjustment has full and final authority in its decisions. The only recourse from a decision of the board is through the courts. Decisions of the board of adjustment do not require approval of the board of supervisors. The board of adjustment is separate and distinct from the zoning commission and should not be confused with it. In rendering a decision, the board may approve the request, deny it or modify it.*

358A.17 *The vote of at least three members of the board is required to reach a decision. This means that if only three of the five members of the board are present, the favorable vote of all three is required to approve an appeal.*

358A.18 *Any disagreement with a decision of the board may be appealed to the civil courts. A petition to the court must be filed within 30 days after the decision of the board. This petition shall declare that the decision of the board was illegal and shall specify the grounds on which the decision was found to be illegal. If a petition is not filed within 30 days, the courts have no authority to hear the case and the board's decision shall stand.*



## Law

**358A.19 Review by court.** Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

**358A.20 Record Advanced.** The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

**358A.21 Trial to court.** If upon the hearing which shall be tried de novo it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

**358A.22 Precedence.** All issues in any proceedings under the foregoing sections shall have preference over all other civil actions and proceedings.

**358A.23 Restraining Order.** In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure, or land is used in violation of this chapter of any ordinance or other regulation made under authority conferred thereby, the board of supervisors, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct or abate such violation to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

## Explanation

**358A.19** Upon the filing of a petition by an aggrieved party, the court may require the board of adjustment to forward all records pertaining to the case to the court for review. The appellant must present his case within 10 days, but this period may be extended by the court. Such an appeal shall not act as a stay on proceedings based on the decision of the board. The court may grant a staying order, however, if the appellant requests and can show adequate cause for issuing the restraining order.

**358A.20** The board of adjustment is not required to forward to the court its original record of the appeal but must submit certified or sworn copies. These copies of the record must contain all facts and evidence pertaining to the case and evidence showing the grounds upon which the decision was based.

**358A.21** The court's hearing shall be considered a new hearing. The court may require testimony or may appoint a referee to take evidence. The referee shall report his finding of fact to the court and any conclusions of the law which may be established by the referee. Such fact and conclusions shall be made a part of the court proceedings. The court may reverse, approve or modify the board's decision.

No court costs may be assessed against the board unless it is apparent that the board acted with negligence, in bad faith or with malice in rendering its decision.

**358A.22** A petition of appeal concerning a decision of the board shall have priority over all other civil actions and proceedings before the courts.

**358A.23** Power is granted to the board of supervisors to stop, prevent or correct violations of the zoning ordinance. The supervisors may take any appropriate action, including prosecution, against any violators of the ordinance.





## Law

**358A.24 Conflict with other regulations.** Wherever the regulations made under authority of this chapter require a greater width or size of yards, courts or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this chapter shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this chapter, the provisions of such statute or local ordinance or regulation shall govern.

**358A.25 Plumbing code enforced.** Subject to the provisions of sections 358A.1 and 358A.2, the board of supervisors of any county is further authorized to adopt regulations to provide that every dwelling, whether now or hereafter erected within the county but outside the corporate limits of any city or town which shall develop a private water supply or install a pressure water system or install sanitary house drains, shall comply with the recommendations of the state department of health on minimum requirements as set out in the state plumbing code in regard to such development or installation. Any such regulation may be enforced in the same manner as any other regulation adopted under this chapter.

**358A.26 Penalty.** In addition to any other remedy granted herein, the violation on any regulation, restriction, or boundary adopted under this chapter or the occupancy or the use of any structure erected, altered or maintained in violation of this chapter shall constitute a misdemeanor. Such occupancy or use shall be deemed a continuing violation and may be the subject of repeated prosecutions if so continued. Every person convicted of a misdemeanor, by reason of violations hereinabove set forth, shall be punished by a fine of not more than one hundred dollars or by imprisonment of not more than thirty days.

## Explanation

**358A.24** When the zoning ordinance requires higher standards than other local statutes or regulations, the provisions of the zoning ordinance shall apply. When other local laws or regulations require higher standards than zoning, such regulations and laws shall apply. Deed restrictions are private and enforceable only through civil action. Deed restrictions have no effect upon zoning regulations.

**358A.25** Any county at the option of the board of supervisors may require that the water supply system and plumbing for existing or future dwellings meet minimum requirements of the state plumbing code. Farms are exempt from this regulation. This regulation applies only if such services are to be provided by decision of the owner. The supervisors cannot require that sewer and water be installed but can require compliance with the regulations if the owner decides to install them.

**358A.26** Any violation of any part of the zoning ordinance is a misdemeanor. If a violation is continued it is subject to repeated prosecution. Violators, if convicted, are subject to a fine of up to \$100 per violation or by imprisonment of not more than 30 days.